

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

EQUAL GROUND EDUCATION FUND,
INC., *et al.*,

Plaintiffs,

v.

CORD BYRD, in his official capacity as
Florida Secretary of State, the FLORIDA
SENATE, and the FLORIDA HOUSE OF
REPRESENTATIVES,

Defendants.

Case No. 2026 CA 000914

**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR TEMPORARY
INJUNCTION**

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INTRODUCTION

The 2026 Plan was not drawn to comply with the Florida Constitution. By the Governor's own map drawer's admission, it was drawn using partisan data, without regard for the Fair Districts Amendment, on the basis of legal theories that no court has accepted. Defendants do not seriously contest any of this. Instead, they attempt to throw up procedural, constitutional, and equitable obstacles in hopes that one of them lands. None does.

The audacity of Defendants' position deserves recognition. Precisely because the partisan intent behind the 2026 Plan is unavoidable, Defendants resort to arguing that the Fair Districts Amendment does not apply at all. Defendants attempt to ground this argument in recent case law, but no precedent from the U.S. Supreme Court or the Florida Supreme Court requires invalidation of the Amendment's racial protections, and even if it did, Florida's severability doctrine does not allow the rest of the Amendment to fall. Rather than embrace this conclusion, Defendants—public officials who swore an oath to uphold the Florida Constitution—are simultaneously arguing that a Florida constitutional amendment endorsed overwhelmingly by the people is unconstitutional and must be struck down in its entirety, while insisting that their admittedly non-compliant 2026 Plan is entitled to a presumption of validity that this Court must respect. It is a stunning display of self-interested advocacy.

At bottom, Plaintiffs ask this Court to do something simple: preserve the status quo by reinstating the lawful, court-approved map that governed Florida's last two congressional elections—a map that Defendants themselves enacted and defended through years of litigation. The Fair Districts Amendment remains fully in force, the 2022 Plan remains constitutionally sound, and this Court has both the authority and the obligation to prevent the 2026 Plan from taking effect before Florida's voters are forced to cast their ballots under a map that was drawn in knowing defiance of their Constitution.

ARGUMENT

I. Plaintiffs are substantially likely to show the 2026 Plan violates the Fair Districts Amendment.

The record before this Court leaves no doubt that the 2026 Plan, both plan-wide and at the district level, violates the Fair Districts Amendment's requirement that "[n]o apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party." Art. III, § 20(a), Fla. Const. Plaintiffs have presented not only direct statements of partisan intent, but also circumstantial evidence of exactly the type contemplated by the Florida Supreme Court in prior decisions construing the Amendment. *See* Pls.' Br. Argument I.A. Plaintiffs have also demonstrated that the 2026 Plan and several of its individual districts independently violate the Fair Districts Amendment's Tier II requirements that "districts shall be compact" and "shall, where feasible, utilize existing political and geographical boundaries." Art. III, § 20(b), Fla. Const.; Opening Br. Argument I.B.

Although Defendants argue the 2026 Plan is entitled to a "presumption of validity," Sec'y Br. at 4 (citing *Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec'y*, 415 So. 3d 180, 197 (Fla. 2025)), no such presumption should attach when the Plan's map drawer admitted before the Legislature that he drew the plan "not having to comply with the Fair Districts Amendment." Pls.' Ex. 12 at 23. When asked by a Senator, "[H]ow does this map comply with the Florida Fair District[s] Amendment?" Poreda was adamant: "[I]t does not have to." *Id.* at 22. A presumption is just that—a presumption. If there is evidence that overcomes it, the Court cannot ignore it. And if Poreda's admission does not suffice to overcome that presumption, nothing would.

Notably, **none of the Defendants actually claim the 2026 Plan was drawn *without* partisan intent**, nor do they affirmatively claim it complies with the Tier II criteria. Nor do they meaningfully rebut any of Plaintiffs' evidence. Defendants simply bank on this Court eschewing

its duty to uphold the Florida Constitution. The Court should reject that invitation and find Plaintiffs substantially likely to succeed on the merits.

A. The 2026 Plan was drawn with intent to favor the Republican Party and disfavor the Democratic Party.

1. Defendants fail to rebut Plaintiffs' evidence of partisan intent.

Direct Evidence. This case is unique for the wealth of direct evidence of partisan intent offered on the public record by those directly responsible for drawing the map. *See Harkenrider v. Hochul*, 167 N.Y.S.3d 659, 666 (N.Y. App. Div. 2022) (explaining that, in the context of a partisan gerrymandering claim, “direct evidence is rare and certainly not required for petitioners to meet their burden”). First and foremost, the mapmaker himself, Jason Poreda, openly admitted that he relied on partisan data to craft the 2026 Plan. Poreda told the Legislature that he was “definitively the only person who drew” the 2026 Plan. Pls.’ Ex. 12 at 68. And he repeatedly explained to lawmakers not only that he used partisan data, but that it informed his decisions in drawing district lines, admitting that partisan data “was a consideration as [he] was drawing,” “mixed in” with all other criteria. *See* Pls.’ Ex. 12 at 51–52. There is nothing ambiguous about Poreda’s admission or its damning impact. Just months before his office released the 2026 Plan, Governor DeSantis himself acknowledged that mapmakers “are *not allowed to use* the partisan data.” Pls.’ Ex. 44 (emphasis added).

The Secretary attempts to downplay Poreda’s admission, musing that “partisan data” might have referred to “voter registration” or “turnout” data. Sec’y Br. at 12. Although such an interpretation is not even entirely exculpatory, the Secretary’s speculation is refuted by the exchange in which Mr. Poreda made the admission. Specifically, Senator Osgood asked, “Did you analyze any partisan performance of districts before finalizing the maps?” and Poreda responded, “So . . . not having to comply with the Fair Districts Amendments, the entire suite of redistricting

criteria that are available to other states, I used here, including partisan data.” Pls.’ Ex. 12 at 23. Poreda’s admission was clear: he used data that the Fair Districts Amendment otherwise would have prohibited.

Plaintiffs also presented direct evidence from the Governor’s Office, which employs Poreda. *See* Pls.’ Ex. 12 at 30–31. The day before the Legislature’s special session began, the Governor’s Office sent Fox News a partisan color-coded version of the 2026 Plan that depicted 20 red districts and four blue districts. Pls.’ Ex. 43. In a statement to Fox News, Governor DeSantis explained that the map was drawn to reflect the increase of the Republican population of the state. Ex. 41 (“[W]e have moved from a Democrat majority to a 1.5 million Republican advantage.”). Defendants brush this evidence aside as “public statements” and “partisan expectations,” Senate Br. at 17, but neither characterization undermines the statements’ evidentiary value. This direct evidence of intent speaks for itself.

Circumstantial Evidence. Defendants also fail to even contest—let alone meaningfully rebut—much of Plaintiffs’ circumstantial evidence, including evidence regarding the 2026 Plan’s disregard for Tier II principles, *see* Opening Br. at 34–35, departures from the normal procedural sequence in the 2026 Plan’s passage, *see id.* at 35–36, and pretextual explanations related to population shifts in Florida, *see id.* at 36–37.

Defendants also fail to rebut the fundamental conclusions of *any* of Plaintiffs’ experts. As explained in Plaintiffs’ Opening Brief, *id.* at 11–12, 13–23, ***Dr. Jonathan Rodden*** demonstrates that the 2026 Plan “reflects partisan goals, rather than an effort to respond to population shifts or to improve traditional redistricting criteria as compared to the 2022 Plan.” Pls.’ Ex. 2 at 41. His analysis shows that the 2026 Plan severely alters Democratic-leaning districts in the Tampa Bay, Orlando, and Southeast Florida regions in a manner that violates traditional redistricting principles,

thereby creating a large number of comfortably Republican districts, while leaving untouched Republican districts far from those metropolitan areas. *Id.* Defendants’ experts do not contest any of Dr. Rodden’s core conclusions. In response to Dr. Rodden, Dr. Trende suggests an alternative method of calculating core retention in southeast Florida, *see* Sec’y Ex. 2 at 20, and complains about the shading of Dr. Rodden’s images. Sec’y Ex. 2 at 19–20. As Dr. Rodden’s rebuttal report demonstrates, using Dr. Trende’s preferred methods and color-coding makes no difference to his conclusions. *See* Pls.’ Ex. 73 (May 14, 2026 Rebuttal Report of Dr. Jonathan Rodden) at 3–5. Indeed, Dr. Trende’s suggestions produced images that place the partisan tailoring of the 2026 Plan in even sharper relief. *See id.* at 6–11 & Figs. 1–6. Defendants’ stylistic critiques leave untouched Dr. Rodden’s ultimate conclusion that the 2026 Plan’s changes are consistent with an intentional effort to benefit the Republican Party. Pls.’ Ex. 2 at 41.

Next, **Dr. Jowei Chen’s** race-blind, partisan-blind simulations that adhered to the Fair Districts Amendment’s criteria showed the 2026 Plan creates more Republican-favoring districts than *all 5,000* of the computer-simulated plans. *See* Pls.’ Ex. 3 ¶ 41. As Dr. Chen showed, the 2026 Plan is an extreme statistical outlier on every partisan measure he considered as compared to the simulations. *See id.* ¶¶ 41–90. Defendants’ experts do not even attempt to rebut these conclusions. Indeed, although Defendants’ expert Dr. Trende has regularly produced simulations and reviewed Dr. Chen’s simulations in other litigation, *see* Pls.’ Ex. 74 (May 14, 2026 Rebuttal Report of Dr. Jowei Chen) ¶ 3, Dr. Trende has nothing to say about Dr. Chen’s simulations here. And Dr. Voss—who has no clear background in redistricting simulations at all—similarly does not attempt to offer any substantive refutation of Dr. Chen’s findings and makes basic errors in attempting to analyze Dr. Chen’s report. *Id.* ¶¶ 11–13; *see also id.* ¶¶ 2–3, 6–10, 14–25. As for Dr. Voss’ critique that Dr. Chen’s original simulations failed to account for the preservation of city boundaries, Dr. Chen

shows that, when the simulations address that specific concern, the result is the same: The 2026 Plan is a blazing outlier in its favoritism to the Republican Party, one that cannot be explained by a race-neutral plan, by a desire to adhere to the Fair Districts Amendment’s criteria, or by Florida’s political geography. *Id.* ¶ 10 & Tbl. 1.

Finally, ***Dr. Christopher Warshaw*** examined an array of traditional partisan bias metrics and found that the 2026 Plan has a historically extreme level of pro-Republican bias—a larger pro-Republican bias than any other congressional plan in any large state over the past 50 years, and a much larger pro-Republican bias than Florida’s 2012 congressional plan that was struck down by the Florida Supreme Court as a partisan gerrymander. Pls.’ Ex. 4 at 8–9. Dr. Trende does not dispute any of Dr. Warshaw’s conclusions or claim to find any errors in his analysis about Florida’s 2026 Plan. In fact, the word “Florida” barely comes up in his report at all. Instead, Dr. Trende nitpicks specific aspects of the individual metrics Dr. Warshaw examined, ignoring Dr. Warshaw’s explanations about the pros and cons of each metric. *See generally* Pls.’ Ex. 4. Although Dr. Trende apparently does not understand “the point of including them all,” Sec’y Ex. 2 at 12, it is precisely to account for the differences between metrics and to determine whether they all point in the same direction. Pls.’ Ex. 4 at 3. And that is exactly what Dr. Warshaw’s results show: each metric he reviewed, including the mean-median analysis that Dr. Trende prefers, *see id.* at A-5, evidences substantial, unprecedented pro-Republican bias, *see generally id.*

2. Defendants’ legal theories to escape liability lack merit.

Against this mountain of evidence of partisan intent, Defendants lob a series of legal theories to escape liability. None have merit. Defendants begin by calling on the Florida Supreme Court to upend its standard of review. But although the Florida Supreme Court gives redistricting plans “an initial presumption of validity,” (one that should not apply here, for the reasons explained above), the Court has explicitly rejected the “beyond a reasonable doubt” standard for Fair Districts

Amendment claims. *See League of Women Voters of Fla. v. Detzner (Apportionment VII)*, 172 So. 3d at 397, 399. The Senate asks this Court to ignore that precedent. *Compare* Senate Br. at 13–14 (calling for a “beyond a reasonable doubt” standard), *with State v. Dwyer*, 332 So. 2d 333, 335 (Fla. 1976) (declaring that “lower courts are bound to adhere to the [Supreme] Court’s ruling”). This Court, however, is bound by that precedent.

Defendants then try to rewrite the Florida Supreme Court’s precedent to shift attention away from the (damning) intent of the map drawer and onto the collective intent of the Florida Legislature. But the Fair Districts Amendment states simply that “[n]o apportionment plan or individual district *shall be drawn* with the intent to favor or disfavor a political party or an incumbent.” Art. III, § 20(a), Fla. Const. (emphasis added). Consequently, intent under the Fair Districts Amendment is ascertained based on “the actions and statements of . . . those directly involved in the map drawing process.” *Apportionment VII*, 172 So. 3d at 388. Determinations of intent under this provision are “entirely different than a traditional lawsuit that seeks to determine legislative intent through statutory construction.” *Id.*¹ Litigants need not “prove the collective intent of a legislative body,” Sec’y Br. at 10, or establish that a specific “legislator’s vote . . . was motivated by prohibited partisan intent,” Senate Br. at 6; *see also id.* at 11–12. Instead, “direct evidence” of intent may be based on communications by the persons “responsible for drafting districting plans.” *Apportionment VII*, 172 So. 3d at 388–89 (quoting *Easley v. Cromartie*, 532 U.S. 234, 254 (2001)).

In any event, the legislators adopted and gave effect to the partisan efforts announced by “those directly involved in the map drawing process.” *Id.* at 388. Unlike the process that led to the 2012 Plan that the Florida Supreme Court struck down as a partisan gerrymander, where external

¹ For this reason, the Senate’s suggestion that Plaintiffs’ experts improperly opine on legislative intent is also incorrect. *See* Senate Br. at 16–17.

operatives “influence[d] the redistricting process and the congressional plan” unbeknownst to many legislators and even certain map drawers, *Apportionment VII*, 172 So. 3d at 392, here the map drawer’s damning admissions were presented in open session, in response to questioning from legislators. *See generally* Pls.’ Exs. 11, 12. The 2026 Plan’s House and Senate sponsors both acknowledged that Poreda used partisan data, *see* Pls.’ Ex. 13 at 7–8; Pls.’ Ex. 14 at 8, and when asked if the Legislature was “totally deferring to the Governor’s Office,” the Senate sponsor refused to disclaim responsibility for the 2026 Plan: “It is now in our hands. And we have the authority to accept it, to reject it, or to amend it. It is not the Governor’s prerogative as to what the maps will be. **It is ours now.**” Pls.’ Ex. 14 at 43 (emphasis added). Far from being “mere dupes or tools,” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 690 (2021), the legislators were active participants in the 2026 Plan’s violation of the Fair Districts Amendment.

Stuck with Poreda’s admissions, Defendants try to minimize their impact by claiming they do not show “districts were drawn *because of* partisan considerations.” Senate Br. at 15. In support, Defendants cite Fourteenth Amendment case law requiring plaintiffs to show that racial considerations *predominated* during redistricting. *See id.* (quoting *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024)). But under the Fair Districts Amendment, “**there is no acceptable level of improper intent.**” *In re Senate Joint Resol. of Legis. Apportionment 1176 (Apportionment I)*, 83 So. 3d 597, 617 (Fla. 2012) (emphasis added). Plaintiffs are required to show not that partisan intent predominated in the drawing of the 2026 Plan, but merely that it was present.²

Defendants also point to Poreda’s later disavowal of partisan intent. Sec’y Br. at 12–13; Senate Br. at 14–15. As an initial matter, this self-serving attempt at rehabilitation does not negate Poreda’s initial, repeated admissions on the public record. *See, e.g., Cooper v. Harris*, 581 U.S.

² Plaintiffs would prevail even if a predominance standard applied, as demonstrated by the direct and circumstantial evidence described in their opening brief. *See, e.g., Opening Br.* at 24–27.

285, 315 (2017) (affirming trial court’s rejection of map drawer’s “self-contradictory testimony” as to intent). Indeed, courts routinely reject such assertions of lawful intent. *See, e.g., Bush v. Vera*, 517 U.S. 952, 970 (1996) (affirming trial court’s rejection of legislator’s claim of lawful intent); *Hunt v. Cromartie*, 526 U.S. 541, 549 (1999) (same). In any event, Poreda’s clear admissions as to his use of partisan data are far more probative evidence than his self-serving disavowal of unlawful intent, which is the ultimate legal question presented to this Court. Here, all of the available evidence—including undisputed circumstantial evidence regarding the effect the 2026 Plan, the partisan impact of specific line-drawing decision, the 2026 Plan’s disregard for Tier II principles, alternate plans that demonstrate the 2026 Plan is a partisan outlier, the sequence of events surrounding the 2026 Plan, and departures from normal procedure in its enactment—all point in the same direction as Poreda’s initial admission of impermissible partisan intent. Opening Br. Argument I.A.

Finally, the Secretary suggests the undisputed circumstantial evidence is meaningless because Plaintiffs have not shown the *same* facts established during the prior challenge to the 2012 Plan, including the Legislature’s destruction of emails and documents, the involvement of political consultants, and the use of an admittedly partisan plan as a starting point. *See* Sec’y Br. at 11. But the Florida Supreme Court has consistently applied the holistic intent standard reflected in *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 266 (1977), which acknowledges that there are multiple ways to smoke out unlawful intent, *see, e.g., Apportionment I*, 83 So. 3d at 617; *Apportionment VII*, 172 So. 3d at 389. And it cannot be that the 2012 map drawing process is the only type of process that can evidence unlawful partisan intent. Just as a drawn-out, secretive parallel process may be prohibited, so too can a rushed, brazenly open one.

B. The 2026 Plan violates the Florida Constitution’s Tier II requirements.

Plaintiffs’ evidence also establishes plan-wide and district-specific violations of the constitutional command that “districts shall be compact” and “districts shall, where feasible, utilize existing political and geographical boundaries” “[u]nless compliance . . . conflicts with the [Tier I requirements] or with federal law.” Art. III, § 20(b), Fla. Const.; *see* Opening Brief Argument I.B.

Defendants barely attempt to rebut Plaintiffs’ Tier II evidence on the merits. The Secretary inexplicably invokes a “presumption of correctness”—a doctrine applicable to a trial court’s factual findings, *see Alahad v. State*, 362 So. 3d 190, 198 (Fla. 2023)—and otherwise rests on the assertion that “the overall compactness of the [2026 Plan] is consistent with the” 2022 Plan. Sec’y Br. at 15–16. This characterization glosses over the fact that the compactness inquiry includes “visual examination” in addition to consideration of compactness metrics, *see Apportionment I*, 83 So. 3d at 613, and leaves entirely unaddressed Plaintiffs’ district-specific arguments, *see* Opening Br. at Argument I.B. The Senate, for its part, presents a generalized critique of employing simulation evidence to assess compactness or boundary utilization, *see* Senate Br. at 19, but does not defend the Tier II compliance the 2026 Plan or any of the districts specifically challenged by Plaintiffs on that score.

Unable to dispute what is plain to the naked eye, Defendants suggest Tier II violations are too difficult for this Court to resolve at the temporary injunction stage because they are “fact-dependent.” Senate Br. at 19; *see also* Sec’y Br. at 10–11. But the Florida Supreme Court has had no trouble finding Tier II violations on an expedited basis pursuant to the facial review procedure for state legislative districts. *See Apportionment I*, 83 So. 3d at 653–83; *see also* Art. III, § 16(c), Fla. Const. (requiring automatic, expedited judicial review of validity of legislative apportionment). As to compactness, the Secretary warns there is “no precise boundary score that serves as a cutoff for compliance,” Sec’y Br. at 2, but that has not prevented the Florida Supreme

Court from evaluating compactness metrics to invalidate districts before. *See, e.g., Apportionment I*, 83 So. 3d at 662–65. The Senate likewise complains that the splitting of counties or municipalities is “an imperfect proxy” for Tier II’s boundary utilization requirement, *see* Senate Br. at 19–20, but ignores that the Florida Supreme Court has specifically relied on such splits in finding a Tier II violation, *see, e.g., Apportionment I*, 83 So. 3d at 673 (finding Tier II violation because district “splits counties, municipalities, and geographical features”). In short, this Court cannot simply look away from the 2026 Plan’s glaring Tier II violations, which provide an independent basis for enjoining the 2026 Plan.

II. This Court is duty bound to preserve the Fair Districts Amendment and adopt any saving construction, if necessary.

Because the partisan intent behind the 2026 Plan is so inescapable, Defendants resort to an extraordinary argument: that they need not comply with the Fair Districts Amendment at all. Instead of defending the Florida Constitution and arguing for a constitutional application of its provisions, to the extent those provisions raise any constitutional concerns—as Florida law requires—the State Defendants abandon that duty here altogether, arguing affirmatively for the invalidation of existing provisions of Florida’s Constitution. But neither federal nor Florida precedent requires the drastic outcome Defendants seek. To the contrary, in light of the longstanding presumptions in favor of preserving constitutional enactments, Florida law *requires* this Court to adopt a saving construction of the Fair Districts Amendment’s race provisions, if necessary, and to preserve the rest of the Amendment even if those provisions should fail.

A. The Fair Districts Amendment’s race provisions are not unconstitutional or unenforceable in all of their applications.

Defendants’ attempt to invalidate the Fair Districts Amendment’s race provisions wholesale rests on an oversimplification of precedent on the use of race in redistricting and fails to even attempt to adopt a saving construction of the Amendment, as Florida law requires. As the

Secretary tells it, *any* consideration of race in redistricting is now unlawful. But neither *Black Voters Matter v. Byrd* nor *Louisiana v. Callais* went so far, and neither those nor any other precedent requires holding the Amendment unconstitutional in all of its applications.

To start, although *Callais* establishes a new standard for adjudication for federal Voting Rights Act (VRA) claims, no part of *Callais* requires the invalidation of the Fair Districts Amendment’s race provisions. The Court can and should reach this conclusion in two simple steps: first, by recognizing that it has a duty to construe the Fair Districts Amendment in a manner that would render it constitutional if at all possible, and second, by interpreting the Fair Districts Amendment consistently with federal VRA precedent, *as Florida courts already do*. In so doing, the Court would be following the precise framework *Callais* itself laid out, which did not strike down Section 2 of the VRA as unconstitutional, but instead interpreted it in a manner to avoid constitutional concerns. *See Callais*, No. 24-109, 2026 WL 1153054, at *4 (U.S. Apr. 29, 2026) (“Correctly understood, § 2 does not impose liability at odds with the Constitution . . .”).

The **first step** is consistent with longstanding Florida law: when Florida courts review the constitutionality of state statutes (or here, a state constitutional provision), they come with the “presumption of constitutionality,” and Florida courts have an obligation to construe them “to effect a constitutional outcome whenever possible.” *Fla. Dep’t of Revenue v. Howard*, 916 So. 2d 640, 642 (Fla. 2005); *Indus. Fire & Cas. Ins. Co. v. Kwechin*, 447 So. 2d 1337, 1339 (Fla. 1983) (“[T]he statute must be construed so as to avoid any violation of the constitution.”). Under this doctrine, “every reasonable doubt should be resolved in favor of a law’s constitutionality.” *Franklin v. State*, 887 So. 2d 1063, 1080 (Fla. 2004). Although this doctrine is typically applied in the context of review of a state statute, it applies with equal force—if not more force—to interpretations of Florida’s own constitution. *See Coastal Fla. Police Benevolent Ass’n, Inc. v.*

Williams, 838 So. 2d 543, 548 (Fla. 2003) (per curiam) (“The rules which govern the construction of statutes are generally applicable to the construction of constitutional provisions.”); *see also Lane v. Chiles*, 698 So. 2d 260, 263 (Fla. 1997) (“If a constitutional amendment is a higher authority than a state statute, it stands to reason that it is entitled to an even greater degree of deference from the courts.”); *City of Tallahassee v. Fla. Police Benevolent Ass’n, Inc.*, 375 So. 3d 178, 188 n.14 (Fla. 2023) (in construing constitutional provision, noting the “elementary rule” “that every reasonable construction must be resorted to in order to save a [provision] from unconstitutionality” (alteration in original) (citation omitted)). The Court therefore has an obligation to adopt a saving construction where, as here, one is available.

Notably, this is precisely the approach *Callais* itself took. Section 2 of the VRA, like the corresponding provision of the Fair Districts Amendment, on its face prohibits voting practices that “*result[]* in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,” 52 U.S.C. § 10301(a) (emphasis added). Although the Court read the statute on its face to raise constitutional concerns, it construed the statute to “properly fit within” the requirements of the U.S. Constitution by reading in a requirement that Section 2 requires evidence of “intentional discrimination.” *Callais*, 2026 WL 1153054, at *12; *see also id.* (recognizing “where an alternative interpretation of the statute is ‘fairly possible,’ we are obligated to construe the statute to avoid such problems.”) (quoting *Immigr. & Naturalization Serv. v. St. Cyr*, 533 U.S. 289, 299–300 (2001)).

The **second step** follows directly from Florida Supreme Court precedent, which holds that the race provisions of the Fair Districts Amendment should be interpreted consistently with the federal VRA. *See Apportionment I*, 83 So. 3d at 619–20 (explaining that because the Amendments’ race provisions “follow almost verbatim the requirements embodied in the Federal Voting Rights

Act,” “our interpretation of Florida’s corresponding provision is guided by prevailing United States Supreme Court precedent” (citation modified)); *see also Black Voters Matter*, 415 So. 3d. at 187 (adhering to this approach). And while *Callais* has changed the applicable standard for federal VRA claims, *Callais did not strike down Section 2 of the VRA as unconstitutional*. No Defendant suggests otherwise. Accordingly, any Florida court evaluating a claim under the corresponding race provisions of the Fair Districts Amendment can likewise apply the *Callais* standard to that claim *without striking down the Amendment as unconstitutional*.

This Court need not wade into the Amendment’s race provisions. No plaintiff has brought any claim pursuant to those provisions, and this Court is not being asked to apply *Callais* or any other race-related precedent to the claims at issue here. Defendants instead ask the Court to issue a drive-by ruling striking down the race provisions in the course of adjudicating Plaintiffs’ *partisan* claims. But as set forth above, there is no basis in state or federal law for this Court to unilaterally declare those provisions unconstitutional. To the contrary, any such ruling would conflict with precedent that requires this Court to adopt a saving construction of the Amendment where one is plainly available.

The substantive legal standard announced in *Callais* eliminates any constitutional concerns regarding the race provisions of the Fair Districts Amendment. *Callais* made clear that the federal VRA imposes liability “only when the circumstances give rise to a strong inference that intentional discrimination occurred.” 2026 WL 1153054, at *12. Adopting this construction to the equivalent provisions of the Fair Districts Amendment is not only consistent with the Florida Supreme Court’s approach of reading the Amendment consistent with the VRA, it directly addresses the concern raised by the Florida Supreme Court in *Black Voters Matter*: that the Amendment’s provisions could be invoked for a particular district without tying them to “findings of intentional

discrimination, past or present.” 415 So. 3d at 197. It similarly resolves the Florida House’s concern that the Amendment’s race provisions are not time-limited in duration. *See* House Br. at 9. In other words, because liability would attach if plaintiffs can show evidence of “present-day intentional racial discrimination regarding voting,” rather than “discrimination that occurred some time ago,” *Callais*, 2026 WL 1153054, at *16, there is no risk that those provisions will “be employed [] more broadly” than necessary. House Br. at 9 (citing *Grutter v. Bollinger*, 539 U.S. 306, 342 (2003)).

Finally, Defendants try to resurrect an argument they repeatedly raised in the *Black Voters Matter* litigation and no court ever adopted—that the Amendment’s race provisions must be unconstitutional because they “supersede traditional redistricting criteria.” Sec’y Br. at 17, House Br. at 4; *see, e.g.*, Secretary Byrd’s Initial Brief, 2023 WL 6811916, at *28–30. Indeed, the Florida Supreme Court has never interpreted the Amendment to give the State “*carte blanche* to engage in racial gerrymandering,” *Apportionment I*, 83 So. 3d at 627, and it has rejected minority districts that it deemed “simply not compact” enough to trigger Tier I’s minority voting protections, *see Apportionment VII*, 172 So. 3d at 436; *see also Black Voters Matter*, 415 So. 3d at 198–99 (holding map drawers had no obligation to draw noncompact district to preserve Black opportunity district). *Callais* only bolsters the Florida Supreme Court’s reading of the Amendment. *Callais* made clear that “§ 2 [] does not intrude on States’ prerogative to draw districts based on nonracial factors” including “compactness, contiguity, and maintaining the integrity of political subdivisions.” *Id.* at *13 (citation modified); *see also id.* (“It is up to each State to decide what weight, if any, [these criteria] warrant.”). In other words, just as the Court can interpret the Fair Districts Amendment’s substantive race provisions in a constitutional manner consistently with *Callais*, as in fact the Florida Supreme Court effectively did in *Black Voters Matter*, the Court can also interpret the

interplay between the Amendment's Tier I and Tier II criteria in a constitutional manner consistently with *Callais*.

Properly understood, the Amendment's race provisions do not require race to predominate and can be interpreted to fall entirely within the limits of the U.S. Constitution. That reading is faithful to Florida law, consistent with *Callais*, and consistent with Florida Supreme Court practice and preference. There is simply no legitimate basis to take the drastic, unnecessary, and unlawful step of striking down part of the Florida Constitution.

B. Defendants have not met their burden to establish that the Fair Districts Amendment's racial protections are non-severable.

Even if the Fair Districts Amendment's race protections were unconstitutional, that would not foreclose Plaintiffs' claims, as the rest of the Amendment would continue to require map drawers to comply with its partisan gerrymandering prohibition and Tier II criteria. Defendants' arguments to the contrary mischaracterize basic severability doctrine under Florida law and fail to apply longstanding presumptions in favor of preserving constitutional enactments.

The strong judicial presumption in favor of preserving voter-enacted constitutional amendments all but forecloses Defendants' non-severability argument. The severability doctrine requires "the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions." *Ray v. Mortham*, 742 So. 2d 1276, 1280 (Fla. 1999); *see also State v. Calhoun County*, 170 So. 883, 886 (Fla. 1936) (recognizing the clear preference under Florida law to preserve the constitutionality of enactments such that if one provision is "consistent with the limitations of the Constitution and another in violation of them, the latter should not control to strike down the statute"). Florida law thus "adopts a strong presumption of severability, and squarely places the burden on the party challenging severability." *Hetherington v. Madden*, 558 F. Supp. 3d 1187, 1191 n.3 (N.D. Fla. 2021).

Ray holds this presumption applies with equal force to constitutional amendments enacted by the citizens of Florida,

[J]ust as we view the severability of laws with deference to the legislative prerogative to enact the law, we conclude that we must afford no less deference to constitutional amendments initiated by our citizens and uphold the amendment if, after striking the invalid provisions, the purpose of the amendment can still be accomplished.

Ray, 742 So. 2d at 1281; *see also Lane*, 698 So. 2d at 263 (recognizing ultimate deference to constitutional amendments). That deference is especially weighty in the context of post-enactment review. *See Ray*, 742 So. 2d at 1281 (“Rather than ignoring the results of the election and requiring the Secretary of State to show that voters would have approved an amendment without the unconstitutional provisions, the burden is properly placed on the challenging party.”). Here, the Fair Districts Amendment has not simply been approved by Florida voters—it has been in effect for over fifteen years, guiding various legislatures’ redistricting decisions and Florida courts’ review of redistricting plans, and has been cited by the U.S. Supreme Court as a model for the nation. *See Rucho v. Common Cause*, 588 U.S. 684, 719 (2019). The case for preserving it to the maximum extent possible could not be stronger.

The Secretary inexplicably argues for the opposite presumption, invoking *State v. Deal*, 4 So. 899, 907 (Fla. 1888), for the proposition that courts should “hesitate” before allowing portions of a law to stand after other portions are struck. *See Sec’y Br.* at 18–19. But *Ray* was decided more than a century after *Deal*, is directly on point, and establishes a strong presumption in favor of severability, not against it. Moreover, *Deal* is entirely inapposite on its facts: it involved a bill that was enrolled with spurious provisions inserted after legislative passage and presented to the governor in a materially altered form—a circumstance bearing no resemblance whatsoever to this case. *See Deal*, 4 So. 899 at 294, 310. The analysis urged by the Secretary is not only unsupported;

it “would be the antithesis of the purpose underlying severability—to preserve the constitutionality of enactments where it is possible to do so.” *Ray*, 742 So. 2d at 1281.

Rather than apply Florida severability law, the Secretary points to out-of-state cases that declined to sever portions of citizens’ initiative amendments. *See* Sec’y Br. at 19–20. Those cases are inapposite for a fundamental reason: they involved amendments that violated the single-subject or separate-vote requirements of their respective constitutions.³ The logic of those cases—that severability cannot cure a single-subject violation—has no application here, where no single-subject violation exists in the first place. The Florida Supreme Court reviewed and approved the amendment before it appeared on the ballot, expressly finding that it satisfied the single-subject requirement. *See Advisory Op. to Att’y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 181–82 (Fla. 2009).

The Secretary nonetheless argues that *because* the Amendment satisfies the single-subject requirement, its provisions must rise or fall together. That argument is wrong as a matter of Florida law. In *Ray*, the Florida Supreme Court held that compliance with the single-subject requirement “does not mean that the provisions of the amendment are so mutually dependent on one another that the overall purpose of the amendment cannot be accomplished absent the invalid provisions.” 742 So. 2d at 1282. As the Court explained, the single-subject requirement was designed to “protect against multiple ‘precipitous’ and ‘cataclysmic’ changes in the constitution by limiting to a single subject what may be included in any one amendment proposal.” *Id.* (quoting *Advisory Op.*

³ *See Thom v. Barnett*, 967 N.W.2d 261, 282 (S.D. 2021) (explaining that amendment “was not prepared and distinguished such that the different subjects could be considered and voted on separately” and “judicial surgery” could not cure the violation of the single-subject rule); *Mont. Ass’n of Cnty. v. State ex rel. Fox*, 404 P.3d 733, 747 (Mont. 2017) (“[A] constitutional amendment submitted to the electorate in violation of the separate-vote requirement is void in its entirety.”); *Armatta v. Kitzhaber*, 959 P.2d 49, 68 (Or. 1998) (concluding that a failure to comply with the constitutional separate-vote mandate for a constitutional amendment voids it in its entirety).

to *Att’y Gen. re Term Limits Pledge*, 718 So. 2d 798, 801 (Fla. 1998)). The severability analysis, by contrast, concerns “whether, absent the invalid portions, the . . . amendment[] can nonetheless accomplish its purpose.” *Id.* These are distinct inquiries, and satisfying the former does not foreclose the latter. Indeed, because an initiative must satisfy the single-subject requirement before being placed on the ballot, accepting the Secretary’s argument “would require [courts] to invalidate the entirety of every citizens’ initiative amendment whenever a portion was declared invalid after the passage of the amendment.” *Id.* The Florida Supreme Court squarely rejected that approach in *Ray*, and that precedent binds this Court.

After disregarding *Ray*’s holding on the single-subject issue, the Secretary pivots to a new argument: that *Ray* makes severability available to a citizen initiative only if the initiative itself contains an express severability clause. Sec’y Br. at 20–21. Neither the House nor the Senate follow the Secretary down this legally indefensible path. *See* House Br. at 18 (arguing only that the lack of a severability clause weighs against severability). For good reason—that argument egregiously misreads *Ray* and directly contravenes Florida law. *See Calhoun*, 170 So. at 886 (recognizing preference for severability even if “there is no separability clause in the act”); *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 31 (Fla. 1st DCA 2008) (applying four-prong *Cramp* test despite lack of severability provision); *Dade County v. Keyes*, 141 So. 2d 819, 821 (Fla. 3d DCA 1962) (“[I]t is the duty of the court to preserve [remaining portions’] validity whether or not a severability clause was included.”). The Secretary argues that the presence of a severability clause was *essential* to the Florida Supreme Court’s holding in *Ray*, but the Court’s own conclusion on severability says nothing of the kind. *See Ray*, 742 So. 2d at 1284. The Court’s holding rested entirely on its application of the four *Cramp* prongs, and it was only *after* reaching that conclusion that the Court added that the presence of a severability clause was “persuasive” additional evidence

of the framers' intent. *Id.* at 1283–84. That sequencing is dispositive: the severability clause was supplementary confirmation, not a prerequisite. Had it been dispositive, *Ray* would never have applied the *Cramp* prongs in the first place. The absence of a severability clause in the Fair Districts Amendment means only that the Court must look elsewhere for evidence of voter intent. That evidence, as set forth below, strongly supports severability.

Defendants' remaining arguments on the *Cramp* prongs are likewise without merit. On purpose: Relying on the Florida Supreme Court's 2009 advisory opinion, the Secretary argues that the Fair Districts Amendment has a "single unified purpose" and that the racial protections are integral to it. Sec'y Br. at 22. But that advisory opinion addressed the single-subject requirement at the ballot-placement stage, not the severability question now before this Court. As discussed above, *Ray* foreclosed any argument that compliance with the single-subject rule equates to non-severability. The question under *Cramp* is whether the prohibition on partisan gerrymandering can independently accomplish the Amendment's purpose of "establishing [the] standards by which legislative and congressional districts are to be drawn," *Advisory Opinion*, 2 So. 3d at 183—and it plainly can. That purpose is fully accomplished by the prohibition on partisan gerrymandering, the compactness requirement, the boundary utilization requirement, and the contiguity requirement—none of which depends on or references the racial protections. That numerous other states have enacted prohibitions on partisan gerrymandering and compactness requirements without any corresponding racial protections confirms that such provisions are fully capable of operating as standalone requirements. *See* Ariz. Const. art. IV, pt. 2, § 1(14); Haw. Rev. Stat. § 25-2(b); Idaho Code § 72-1506; Mich. Const. art. IV, § 6(13); Mont. Code Ann. § 5-1-115(2); Wash. Rev. Code § 44.05.090.

On structural non-severability: Defendants argue that subsections (a) and (b) of Article III, Section 20 are hopelessly “interlock[ed]” in a tiered scheme. Sec’y Br. at 21–22; House Br. at 12–13. But striking the racial protections from subsection (a) leaves the partisan gerrymandering prohibition—as well as the compactness and boundary requirements in subsection (b)—entirely intact. It simply removes one of the Tier I clauses while leaving the others, and all of Tier II, grammatically sound, fully operative, and independently enforceable. Indeed, the Florida Supreme Court has invalidated districts solely based on partisanship and boundary violations, without any need to interpret or apply the race provisions. *See, e.g., Apportionment I*, 83 So. 3d at 662–65 (finding violations of compactness and boundary requirements in majority-white districts); *id.* at 672–73 (same, and also noting failure to comply with Tier II standards was evidence of intent to favor incumbent). The House’s reliance on *Emerson* is particularly misplaced: that case involved a provision that was literally inoperable without the severed portion—a surtax without a distribution scheme. *Emerson v. Hillsborough County*, 312 So. 3d 451, 461 (Fla. 2021). No such dependency exists here. Every remaining provision of the Fair Districts Amendment is fully operable, fully enforceable, and fully meaningful standing alone.⁴

Finally, on voter intent: Defendants argue that voters would not have adopted the partisan gerrymandering prohibition or boundary requirements without the racial protections, pointing to the NAACP’s endorsement letter and Ellen Frieden’s legislative testimony as evidence that the racial protections were an integral part of a “packaged deal.” Sec’y Br. at 23–24; House Br. at 16–18. But the *Ray* court squarely placed the burden of proving non-severability on the challenging

⁴ The House also relies on *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008), for its structural non-severability argument, but that case held the provision at issue—an exception to a physician licensure revocation requirement—was not severable because “it [did] not appear that the legislature would have passed the [constitutional part] without the rest.” *Id.* at 33. As discussed below, Defendants have not met their burden to prove that the voters who enshrined the Fair Districts Amendment in the Constitution would have voted against it without the racial protections.

party, 742 So. 2d at 1281, and the historical record Defendants cite cuts both ways. Although the NAACP’s endorsement emphasized the racial protections (which is not surprising, given the organization’s focus), the campaign’s own public messaging, newspaper coverage, and television advertisements—directed to the *voters* who would ultimately decide whether to approve or reject the measure—focused overwhelmingly on the compactness and boundary requirements, not the racial protections. Opening Br. at 48–50. And the prohibition on partisan gerrymandering was what newspapers explaining the measure to the public identified as the Amendment’s “crucial language,” and what the campaign’s own spokeswoman described as its animating purpose. *Id.* That historical record was the subject of a detailed expert report commissioned by the Secretary in prior litigation—a report whose principal conclusion was that “the primary purpose of the Fair Districts [A]mendment[]” was its prohibition on “redistricting based on political partisanship,” rather than “preservation of minority representation,” Pls.’ Ex. 46 at 3, 57—a report Defendants conspicuously fail to mention in their briefs. At minimum, that mixed historical record falls far short of carrying Defendants’ burden to show that voters would have rejected the Amendment absent the racial protections.

C. The Court should not allow Defendants to make an end-run around the public official standing doctrine.

Defendants’ primary position on the merits in this case is that the Fair Districts Amendment itself should be struck down in its entirety. That is not a defense. It is an affirmative constitutional challenge to a voter-enacted amendment that public officials have no standing to bring, as Defendants’ own attorney acknowledged before the Florida Legislature.

Florida’s public official standing doctrine bars government officials from asserting constitutional challenges to laws they are charged with enforcing. *See State ex rel. Atl. Coast Line R.R. Co. v. State Bd. of Equalizers*, 94 So. 681 (Fla. 1922); *Crossings at Fleming Island Cmty.*

Dev. Dist. v. Echeverri, 991 So. 2d 793 (Fla. 2008). As the Florida Supreme Court has explained, “the oath of office ‘to obey the Constitution,’ means to obey the Constitution, not as the officer decides, but as judicially determined.” *Id.* at 683 (quoting *Atl. Coast Line*, 94 So. at 683).

The Secretary’s own attorney, Mohammad Jazil, acknowledged before the Florida Legislature that public officials are prohibited from doing exactly what Defendants are doing here—challenging the constitutionality of the Florida Constitution. When Senator Jones asked why the executive branch did not simply challenge the Amendment in court, Jazil responded:

So, sir, as executive branch officials, the public official standing doctrine prohibits us from challenging the constitutionality of a state provision in the first instance . . . The legislature, the executive branch cannot go challenging a state statute or a state constitutional provision. The way to tee this up is to pass a law, have it plainly before the courts, and have them address it.

Pls.’ Ex. 12 at 29. This admission is as candid as it is damning. Jazil acknowledged in open legislative session that the 2026 Plan is an attempt to accomplish through the back door what Defendants are prohibited from doing directly. The 2026 Plan is not, by Defendants’ own account, a good-faith effort to comply with the Florida Constitution. It is an engineered vehicle to force a constitutional challenge that Defendants cannot bring themselves.

That distinction makes this case markedly different from *Black Voters Matter*, where the Florida Supreme Court held that the public official standing doctrine did not apply because the State was defending a statute they had enacted—then, the 2022 Plan. 415 So. 3d at 195. That holding rested on the premise that Defendants were acting as defenders of enacted law, not as challengers of a constitutional provision. Here, Defendants have openly admitted the 2026 Plan was enacted to manufacture a vehicle for challenging the Fair Districts Amendment’s constitutionality—precisely what the public official standing doctrine forbids. *See Dep’t of Educ.*

v. Lewis, 416 So. 2d 455, 458 (Fla. 1982) (holding that state officers and agencies cannot “initiate litigation” for the purpose of determining the constitutionality of a law).

Defendants’ non-severability argument deepens the problem and underscores just how far outside the bounds of Florida law and precedent Defendants have ventured. Not only are Defendants using the 2026 Plan to challenge the Fair Districts Amendment’s racial protections in a way that they could not do directly, they are simultaneously arguing against the strong presumption in favor of severability that Florida law commands courts to apply to constitutional amendments. *See supra* Argument II.B. It is one thing for a private party to argue that a law is unconstitutional. It is quite another for *public officials* to argue *against* a provision of the state constitution that they are bound to uphold and then try to topple other constitutional provisions in the process. That second step is the tell: the Amendment’s prohibition on partisan gerrymandering has nothing to do with *Callais*, nothing to do with the Equal Protection Clause, and everything to do with the fact that Defendants have every political reason to want that provision eliminated.

The confluence of these positions speaks for itself: Defendants have all but conceded that they have used the 2026 Plan as bait to invite a court to strike down the Fair Districts Amendment. This is not a legal defense. It is an orchestrated attempt by the very officials charged with enforcing and defending the Florida Constitution to dismantle it.

III. This Court can and should preserve the status quo by reinstating the 2022 Plan.

Florida precedent makes clear this Court has the authority to preserve the status quo by reinstating the 2022 Plan. The 2022 Plan is not a novel judicial remedy requiring a full merits trial before implementation; it is the legislatively-enacted congressional plan that has been in place for every election this decade, and Defendants fail to show it has any constitutional defects that would prohibit its continued use. Defendants’ own evidence also shows there is time to revert to the 2022

Plan; any other timing concerns Defendants raise rely on inapplicable case law and are a product of their own making.

A. This Court has the authority to enter a temporary injunction reverting Florida back to the 2022 Plan.

Defendants’ reliance on *Byrd v. Black Voters Matter Capacity Building Inst., Inc.*, 339 So. 3d 1070 (Fla. 1st DCA 2022), to argue Plaintiffs cannot obtain temporary injunctive relief grossly misreads that decision and misapplies it to the facts of this case. *Byrd* does not categorically preclude temporary injunctive relief in a declaratory judgment action involving a redistricting challenge. *Byrd* instead holds that a temporary injunction cannot be used to impose a never-enacted, judicially-created remedial map as provisional relief before a final merits determination. *Id.* at 1073, 1079. But that is not what Plaintiffs seek here.

The *Byrd* court was emphatic that the circuit court below erred precisely because its injunction did “not just return the parties to the condition that existed before the subject matter at the center of the present controversy arose,” but did “much more” by giving “the appellees affirmative relief by requiring the secretary to conduct the 2022 congressional elections under an entirely new, unenacted plan recently proposed by the appellees”—what the court characterized as a “provisional remedy.” *Id.* at 1073. The court’s objection was not to temporary injunctive relief *per se*, but to the imposition of affirmative, remedial relief that went beyond the preservation function the Florida Constitution contemplates for the writ of injunction. *See id.* at 1075 (explaining that the “constitutional writ of injunction . . . functions only to give interim *procedural* relief” to maintain the status quo, which “is not the same as a *remedy*”).⁵

⁵ The Senate argues that granting Plaintiffs a temporary injunction “would be to grant Plaintiffs the ultimate remedy sought in their complaints at the very inception of the case.” Senate Br. at 2, *see also id.* 8–9. But Plaintiffs’ complaint seeks the adoption of “a new congressional districting plan that complies” with the Fair Districts Amendment. *See* Compl. Prayer for Relief. A temporary injunction that maintains the status quo pending a final merits determination is not the “ultimate remedy” that Plaintiffs seek.

Critically, the *Byrd* court then drew the precise line that governs this case: a temporary injunction “**could only reinstate the former congressional map**. It could never put in place a map that did not exist before the present controversy began.” *Id.* at 1079 (emphasis added). That is precisely the narrow relief Plaintiffs’ temporary injunction motion seeks. Pls.’ Mot. at 1–2. Reinstating the 2022 Plan simply “return[s] the parties to the condition that existed before the subject matter at the center of the present controversy arose, *i.e.*, before [the 2026 Plan] became law.” *Byrd*, 339 So. 3d at 1073. That is, in the *Byrd* court’s own words, the one thing a temporary injunction may always do.

Both the Secretary and the Senate further argue that Plaintiffs seek a mandatory injunction, but that characterization is wrong. “Courts distinguish between prohibitory injunctions, which restrain specific conduct, and mandatory injunctions, which command specific conduct and are looked upon with disfavor.” *Park Crossing Homeowners Ass’n, Inc. v. Suarez*, 415 So. 3d 676, 690 (Fla. 4th DCA 2025). What *Byrd* condemned—imposing a never-enacted, judicially proposed remedial map—is the quintessential mandatory injunction: it commands affirmative action the defendant has not previously taken. *See Bull Motors, LLC v. Brown*, 152 So. 3d 32, 35 (Fla. 3d DCA 2014). What *Byrd* preserved—reinstating the prior map to return the parties to the status quo—is the quintessential prohibitory injunction: it restrains enforcement of a new enactment and restores what preceded it, without commanding any new conduct or resolving any disputed legal question. *See Sullivan v. Moreno*, 19 Fla. 200, 215 (1882) (explaining the purpose of a prohibitory injunction is to “preserve the property or rights *in statu quo*, until a satisfactory hearing upon the merits”). Plaintiffs here seek the latter. Reinstating the 2022 Plan restrains enforcement of the 2026 Plan and returns the parties to where they were before.

Defendants’ broadest argument—that a temporary injunction is categorically unavailable in a declaratory judgment action—is wrong as a matter of Florida law. To start, *Byrd* says no such thing. It merely explains that the Declaratory Judgment Act does not contemplate “a provisional remedy.” 339 So. 3d at 1077. But again, Plaintiffs seek no such thing, and *Byrd* expressly preserved the availability of a temporary injunction that maintains the status quo by reinstating the former legal regime displaced by the challenged enactment—the relief Plaintiffs *do* seek here. *See id.* at 1073, 1079. If no temporary injunction were ever available in a declaratory judgment action, the court would have had no reason to specify what kind of temporary injunction was available in *Byrd*.

The Senate also relies on *Geise v. Fleck*, 51 Fla. L. Weekly D694 (Fla. 6th DCA Apr. 2, 2026), and *City of Newberry v. Alachua County*, 366 So. 3d 1176 (Fla. 1st DCA 2023), for the proposition that chapter 86 requires a declaratory judgment before any final injunctive relief may issue. But Plaintiffs are not seeking a temporary injunction under chapter 86; they are seeking relief under Article V, § 5(b) of the Florida Constitution, which gives circuit courts procedural power to issue temporary injunctions to maintain the status quo. *See Byrd*, 339 So. 3d at 1073.

To be clear, Florida courts can—and do—issue temporary injunctions in actions seeking both injunctive and declaratory relief. *See, e.g., City of Miami Beach v. Clevelander Ocean, L.P.*, 338 So. 3d 16, 21 (Fla. 3d DCA 2022). In *Clevelander*, the City of Miami Beach repealed a noise ordinance exemption and sought to enforce the ordinance against a business. *Id.* at 20–21. The trial court granted the business a temporary injunction, *id.* at 21, and the Third DCA affirmed the temporary injunction “preserv[ing] the status quo pending the final resolution of the issues presented.” *Id.* at 23. Similarly, in *Florida Department of Health, Office of Medical Marijuana Use v. Florigrown, LLC*, the First DCA upheld a temporary injunction issued in a declaratory

judgment action, with the Florida Supreme Court later reversing only because the plaintiff had failed to show a likelihood of success on the merits. 320 So. 3d 195, 198 (Fla. 1st DCA 2019), *decision quashed, cause remanded sub nom. Fla. Dep’t of Health v. Florigrown, LLC*, 317 So. 3d 1101 (Fla. 2021).⁶

In short, Plaintiffs here seek the exact temporary relief *Byrd* authorized: a return to the former congressional map—a prohibitory injunction plainly permissible under Article V, § 5(b) of the Florida Constitution.

B. Defendants fail to show the 2022 Plan is unworkable or unlawful.

In arguing the Court cannot order a return to the 2022 Plan, the Secretary takes a two-paragraph, drive-by shot at the 2022 Plan, arguing it suffers from “racial defects” and implying it is unconstitutional. *See* Sec’y Br. at 6–7. Notably, neither the Florida House nor the Senate joined the Secretary’s brief in this regard, and neither goes so far in their own responses.

In suggesting that the 2022 Plan is unlawful—and that this Court cannot order its re-institution to maintain the status quo—the Secretary makes an abrupt turnaround from his four-year long position defending the 2022 Plan as a constitutional plan. From its *inception*, the 2022 Plan was introduced as a plan that is “constitutional.” *See* Pls.’ Ex. 42. That Plan eliminated then-CD 5, which the Governor’s Office identified as an impermissible racial gerrymander, but raised no other concerns with the remaining districts. To the contrary, the 2022 Plan’s map drawer contended the 2022 Plan “resolv[ed] [the] federal constitutional objections” from the Governor’s

⁶ The Secretary also cites *City of Destin v. The Honorable J. Alex Kelly*, No. 2025-CA-1876 (Fla. 2d Cir. Ct. Dec. 29, 2025), Doc. 42, for the proposition that *Byrd* prohibits temporary injunctive relief in any declaratory judgment action. That decision is an unpublished, non-binding trial court order that is, with respect, incorrect. As explained above, *Byrd* did not categorically foreclose temporary injunctive relief in any declaratory judgment action, and Florida courts have granted temporary injunctions in declaratory judgment actions where, as here, the relief sought is to preserve the status quo rather than impose an affirmative remedy.

Office, brought “together some of the best concepts by the legislature’s prior maps and our office’s maps,” and was drawn without race as a factor. Ex. 22 at 13–14, 38. In litigation concerning then-CD 5, the Defendants here—including the Florida House and Senate—were adamant: “No other district [] raises the same equal-protection concerns” as CD 5. Pls.’ Ex. 75 at 11. As they explained, “[i]n contrast to Benchmark Congressional District 5, concerns about racial predominance did not prohibit Florida from drawing congressional districts elsewhere in the State that satisfy the Florida Constitution, the VRA, and the Fourteenth Amendment.” *Id.*

The State, of course, went on to defend the 2022 Plan successfully, both in state court and federal court, and no court—none—has held that race predominated in the drawing of any of its districts. Indeed, as discussed further below, the State is currently vigorously *defending* the 2022 Plan against a claim that it is a racial gerrymander in federal court. *See generally Cuban Pa’lante et al. v. Fla. H.R.*, No. 1:24-cv-21983 (S.D. Fla. 2024).

Although the Secretary *now* (conveniently) suggests that race predominated in the 2022 Plan, the Secretary carries a heavy burden to make such a showing. To start, “the [2022] Plan, like any legislation, is entitled to a presumption of validity,” *Black Voters Matter*, 415 So. 3d at 197, and under U.S. Supreme Court precedent, the Florida Legislature also receives a “presumption that the legislature acted in good faith” when it comes to race-based accusations. *Alexander*, 602 U.S. at 10. This “especially stringent” presumption directs courts “to draw the inference” that race did not predominate, particularly when the evidence supports multiple conclusions. *Id.* at 10–11.

Moreover, the burden of proving a racial gerrymander rests with the party asserting it (here, the Secretary), *see Miller v. Johnson*, 515 U.S. 900, 916 (1995). In arguing that Plaintiffs bear any burden here, the Secretary turns *Black Voters Matter* on its head. *See* Sec’y Br. at 7. In *Black Voters Matter*, the *plaintiffs* claimed the 2022 Plan was unconstitutional, and so they bore the

burden to make such a showing. *See* 415 So. 3d 198. Here, the *Secretary* claims the 2022 Plan is unconstitutional, and the burden rests with him to make such a showing.

But the Secretary does not even attempt to shoulder that burden. At most, the Secretary cites a *single paragraph* from a legal memorandum prepared by the Governor’s counsel claiming CD 20 has an “odd shape” that is “arguably a telltale sign of racial predominance” and claiming the “legislative record shows” other districts in South Florida were drawn with the Hispanic voting age population in mind. Sec’y Br. at 7 (citing Sec’y Ex. 5). The Secretary does not develop the argument whatsoever, resting on legal conclusions from a Governor’s Office memo rather than putting forward actual argument and evidence that would establish that the 2022 Plan is unlawful. The Secretary’s failure to put forward such evidence—particularly against the starting presumptions of legality—should foreclose any finding that the 2022 Plan is unlawful.

But even if the Court examined the existing record, it would not show that the 2022 Plan is unlawful in any respect, either with respect to CD 20, or any other district in South Florida. To start, there is no evidence that CD 20 is a racial gerrymander—certainly none that can overcome the 2022 Plan’s “presumption of validity.” *Black Voters Matter*, 415 So. 3d at 197. To make the requisite showing, the Secretary “must prove that the [mapmakers] subordinated traditional race-neutral districting principles . . . to [race],” *Miller*, 515 U.S. at 916, such as by showing the district is “so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race,” *Shaw v. Reno*, 509 U.S. 630, 658 (1993). As the U.S. Supreme Court has held, a district’s compliance with traditional redistricting criteria “may serve to defeat a claim that a district has been gerrymandered on racial lines.” *Id.* at 647; *see also Miller*, 515 U.S. at 928 (O’Connor, J., concurring) (requiring party asserting racial gerrymandering claim to demonstrate “substantial disregard of customary and traditional districting practices”).

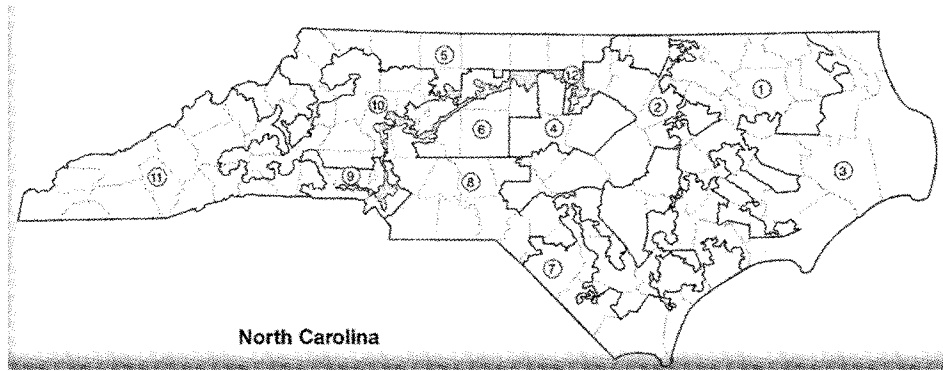
The only evidence in the record about CD 20 in the 2022 Plan is the legislative record that *Plaintiffs submitted* reflecting a commitment to making the district more compliant with the State’s Tier II criteria. As the House Redistricting Chair summarized, “[t]his decade we were able to create [CD 20] in such a way that respects more major roadways in the area, such as U.S. 441, I-95, and the Florida Turnpike, and keeps more cities whole, keeping the cities of Lake Park, Margate, Tamarac, and others wholly within it, which were split a decade ago.” Pls.’ Ex. 20 at 38.

Although the Governor’s Office has (recently) criticized CD 20’s compactness, CD 20 in the 2022 Plan does not have unusually low compactness scores. As the Legislature’s own analysis shows, CD 20’s total mathematical compactness score (the sum of its Reock, Convex Hull, and Polsby-Popper scores) was 1.55, which is *more compact than six districts in the 2022 Plan*, including CDs 4, 10, 17, 19, 26, and 28. *See* Pls.’ Ex. 23 at 10. CD 20 in the 2022 Plan is also more compact than several districts in the 2026 Plan, including new CDs 15 and 25, *on every single mathematical compactness measure. Compare id.*, with Pls.’ Ex. 10 at 16. Moreover, CD 20 simply does not resemble the districts that have been struck down by federal courts as unconstitutional racial gerrymanders, nor is it “so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race.” *Shaw*, 509 U.S. at 658. To put CD 20 in appropriate context, Plaintiffs provide a few images of such districts, each of which had a Polsby-Popper score of just .01 or .02:⁷

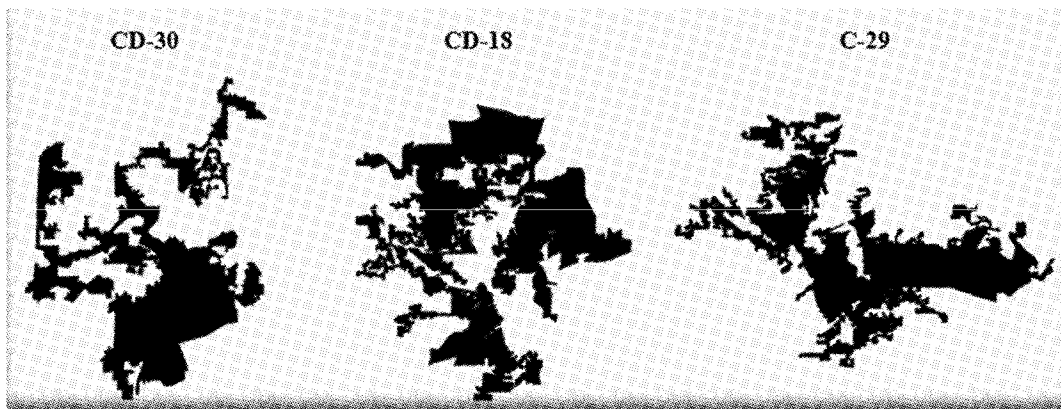
North Carolina’s 12th Congressional District (Race Predominates), *Shaw*, 509 U.S. at 635-36.⁸

⁷ The Polsby-Popper scores (unless otherwise noted) come from Richard H. Pildes & Richard G. Niemi, *Expressive Harms, Bizarre Districts, and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483, 562 (1993).

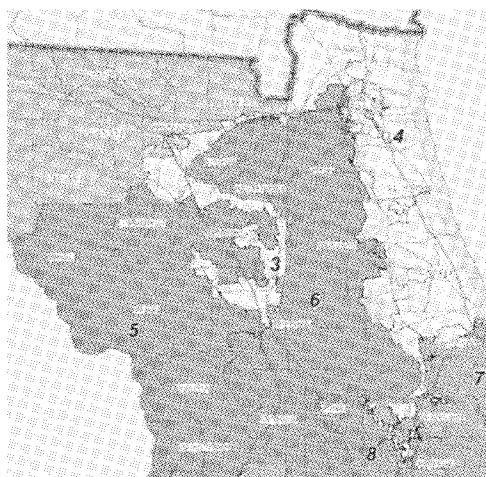
⁸ This image of North Carolina’s 12th district appears in Appendix C to the U.S. Supreme Court’s decision in *Miller v. Johnson*, 515 U.S. 900, 950 (1995), in the official U.S. Reports.



Texas's 18th, 29th, 30th Congressional Districts (Race Predominates), *Vera*, 517 U.S. at 979.⁹



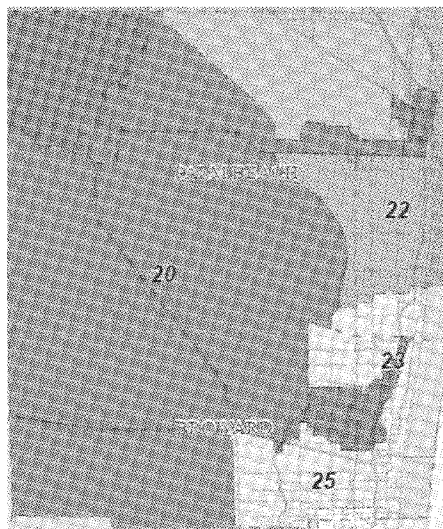
Florida's 3rd Congressional District (Race Predominates), *Johnson v. Mortham*, 915 F. Supp. 1529 (N.D. Fla. 1995).



⁹ See *id.* at 986 (Appendices A–C).

The 2022 Plan’s CD 20, shown below (Ex. 25), simply does not contain the “telltale sign of racial predominance” that the Secretary claims, Sec’y Br. at 7, nor does it resemble the districts struck down as racial gerrymanders in *Shaw*, *Vera*, or *Mortham*, either visually or mathematically. Indeed, CD 20’s Polsby-Popper score (0.28) is *twenty-eight times better* than the districts from *Shaw*, *Vera*, or *Mortham* where race was found to predominate on the basis of the district’s shape, *see supra*. And that is the *only* thing the Secretary offers to suggest race predominated in CD 20: the district’s “odd shape.” Sec’y Br. at 6–7.

CD 20 in 2022 Plan



Finally, CD 20 in the 2022 Plan also compares favorably to the prior CD 5, which the Florida Supreme Court held violated traditional redistricting criteria in *Black Voters Matter*, 415 So. 3d at 198–99. While CD 5 spanned eight counties and was 200 miles long, *id.* at 199, CD 20 spans only two counties (Broward and Palm Beach) and is much smaller in area, *see* Pls.’ Ex. 25. CD 20 is also substantially *more compact than CD 5 on every single mathematical compactness*

measure. Compare Pls.’ Ex. 23 at 10 (CD 20 with total compactness score of 1.55), with Pls.’ Ex. 24 at 43 (CD 5 with total compactness score of 0.88).¹⁰

At bottom, there is no evidence that CD 20 is “so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race,” *Shaw*, 509 U.S. at 658, or that it so “substantial[ly] disregard[ed] customary and traditional districting practices” so as to suggest race was its overriding purpose. *Miller*, 515 U.S. at 928 (O’Connor, J., concurring). To the contrary, the record reflects that the Legislature made an intentional effort to comply with Tier II criteria in drawing it.

The same is true of the other districts in South Florida—none of which the Secretary even bothers to identify. See Sec’y Br. at 7. Indeed, in the *Black Voters Matter* litigation, the Florida House and Florida Senate specifically praised the extent to which minority districts in South Florida complied with traditional redistricting criteria, specifically pointing to Districts 24 and 27 in South Florida as “compact districts both visually and by statistical measurements and [that] were drawn with respect for existing political and geographical boundaries.” Pls.’ Ex. 75 at 11. In even more recent litigation, both the Secretary and the Florida House have vigorously *defended* CD 26 against accusations that it was a racial gerrymander, arguing instead that racial considerations did not predominate and that the district complied with traditional redistricting criteria. See generally *Cubanos Pa’lante et al. v. Fla. H.R.*, No. 1:24-cv-21983 (S.D. Fla.).

The Secretary’s about-face on the lawfulness of the 2022 Plan—now that such a position is convenient—cannot be explained by a change in precedent. Nothing in *Callais* requires a finding that the 2022 Plan is a racial gerrymander—and particularly not on this record. While *Callais* re-interpreted what is required to make a showing of liability under Section 2 of the VRA, see 2026

¹⁰ In particular, where then-CD 5 had a Reock score of just .11, CD 20 has a score of .5, nearly five times better. See *id.* CD 20’s Polsby-Popper score is similarly nearly three times better than CD 5’s. See *id.*

WL 1153054, at *12, *Callais* did not purport to overturn any of the U.S. Supreme Court’s longstanding racial gerrymandering precedent. And nothing in *Callais* prohibits creating majority-minority districts, particularly in areas of the state with substantial minority populations; *Callais* only prohibits the imposition of liability under Section 2 unless certain pre-requisites are shown.¹¹

C. The equities and public interest overwhelmingly favor a temporary injunction.

No defendant argues Plaintiffs have an adequate remedy at law (the second temporary injunction factor), and Defendants do not meaningfully dispute that Plaintiffs will suffer irreparable harm absent a temporary injunction (the third). Although the Senate briefly argues that this case does not involve the constitutional right to vote, and thus cannot impose irreparable harm, *see* Senate Br. at 25, that argument contravenes well-established law finding that “plaintiffs will suffer an irreparable harm if they must vote in . . . congressional elections based on a redistricting plan that violates [the] law.” *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *77 (N.D. Ala. Jan. 24, 2022), *aff’d sub nom. Allen v. Milligan*, 599 U.S. 1 (2023); *see also GRACE, Inc. v. City of Miami*, 674 F. Supp. 3d 1141, 1160–61 (S.D. Fla. 2023) (finding same).

Instead, Defendants argue that reverting to the 2022 Plan is not in the public interest because, regardless of the merits, it is too late for this Court to offer any relief. Sec’y Br. at 25–27; Senate Br. at 22–26. But that argument rests on a misapplication of the federal *Purcell* doctrine—a doctrine that does not bind this Court, has never constituted a per se bar to relief even in the federal courts that created it, and in any event does not apply to the circumstances presented here.

To start, *Purcell* does not bind Florida state courts. The *Purcell* principle is a *federal* doctrine, created by *federal* courts as a tool to restrain *federal* judicial interference in the

¹¹ Indeed, under the 2026 Plan, a “race-neutral” map drawer drew multiple districts in South Florida with substantial minority populations: CD 24, with a Black voting age population (BVAP) of 47.72%, CD 20, with a BVAP of 42.08%, and CDs 26, 27, and 28 with Hispanic voting age populations well above 70%. *See* Pls.’ Ex. 10 at 16.

administration of state elections close to an election. *See Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (“[F]ederal courts should ordinarily not alter the election rules on the eve of an election.”) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). As state courts across the country have recognized, *Purcell* “does not limit state judicial authority where, as here, a *state* court must intervene to remedy violations of the *State* Constitution.” *Harkenrider v. Hochul*, 197 N.E.3d 437, 454 n.16 (N.Y. 2022) (emphases added); *see also State ex rel. Ohio Democratic Party v. LaRose*, 257 N.E.3d 130, 137 (Ohio 2024) (“*Purcell* is a federal case and therefore not binding on this Court”); *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 15 (Iowa 2020) (Appel, J., concurring) (“*Purcell*, of course, is infused with federalism concerns, arising from the notion that federal courts should show a degree of caution before they intervene in state-created election procedures”). This matter, concerning violations of the Florida Constitution, thus poses no threat of a federal court “swoop[ing] in and re-do[ing] a State’s election laws.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring).

Unsurprisingly, Defendants cannot point to a single Florida court that has adopted *Purcell* as a rigid bar to redistricting relief. The cases the Secretary cites—*State ex rel. Haft v. Adams*, 238 So. 2d 843 (Fla. 1970), and *State ex rel. Walker v. Best*, 163 So. 696 (Fla. 1935)—do not establish any such bright-line rule. *Haft* involved a candidate’s attempt to force others off the ballot three weeks before a primary election after sitting on information about an alleged filing fee discrepancy for weeks, which the Court found amounted to an attempt to “belatedly take advantage” of the situation. 238 So. 2d at 845. *Best* involved the question of whether a town clerk could be ordered to publish a charter amendment within the statutory notice period. Neither case stands for the proposition that injunctive relief is categorically unavailable in the weeks before an election.

Even assuming *Purcell* had some relevance to this proceeding, it has never been understood to categorically preclude judicial relief whenever an election is approaching. Indeed, the U.S. Supreme Court itself, without any mention of *Purcell*, recently fast-tracked a final injunction against Louisiana’s congressional map *amid early voting*. See Order on Application to Issue the Judgment Forthwith, *Louisiana v. Callais*, No. 25A1197 (U.S. May 4, 2026). Courts across the country have invalidated redistricting plans and ordered remedies on timelines comparable to—or shorter than—what is available here. See *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022) (invalidating plan approximately three months before primary), *overruled by*, 886 S.E.2d 393 (2023), and *aff’d sub nom. Moore v. Harper*, 600 U.S. 1 (2023); *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (invalidating plan approximately three months before primary and ordering new plan within weeks); *Harkenrider*, 197 N.E.3d at 454–56 (enjoining plan after qualifying period had already passed).

Nor is it too late to offer temporary relief in this case. Florida’s congressional primary is not until August 18, 2026—more than three months away. Plaintiffs are not seeking relief on the eve of an election; they are seeking relief while there is still ample time to revert to the 2022 Plan, which **all 67 Supervisors of Elections were already instructed to preserve** as of May 4, 2026, precisely in anticipation of this contingency. See Pls.’ Ex. 17. And the Secretary’s own evidence confirms that the operative deadline has not passed: According to the Secretary’s own Director of Elections, the Division does not need “a definitive answer on the maps being used” until Monday, May 25, 2026—nearly two weeks away. Sec’y’s Ex. 3 ¶ 13.¹² Against this record, the Senate’s

¹² To be clear, Plaintiffs do not concede reversion to the 2022 Plan would be unworkable after May 25. Matthews’ alleged May 25 deadline is based on the date the Department of State begins accepting candidate qualifying materials, Sec’y Ex. 3 ¶ 8, even though official candidate qualifying period does not begin until June 8, 2026, and candidate names will not be certified until June 13, 2026 at the earliest—underscoring that time remains to reinstate the 2022 Plan. See *id.* ¶ 9. In any event, given the likely appeals in this case, Plaintiffs request this Court issue a decision as soon as possible.

assertion, without any factual evidence, that reverting to the 2022 Plan would cause “chaos,” Senate Br. at 24–26, is pure conjecture, and the Senate’s imagined disruption does not justify allowing an unconstitutional map to remain in place.

To the extent Defendants argue that the calendar constrains this Court’s ability to grant meaningful relief, they cannot invoke equitable principles to benefit from a timeline they created. The Governor’s Office announced a planned special session in *January*, developed the 2026 Plan in secret, delayed that special session, and the Governor did not sign the 2026 Plan into law until five days after it was passed in the legislature. Plaintiffs moved with all deliberate speed: this action was filed *the same day* the Governor signed the 2026 Plan into law, on May 4, and Plaintiffs’ motion for temporary injunction with supporting expert reports followed two days later, on May 6. The same day, the Secretary’s attorney filed a motion to disqualify the assigned judge, which was granted on May 7.¹³ Within minutes of being reassigned to this Court, Plaintiffs sought a hearing on their pending motion, which the Court promptly provided. There is simply no way Plaintiffs or the Court could have moved faster. The compressed timeline Defendants now invoke as a basis for denying relief is entirely of their own making, and equity does not reward a party that creates the very urgency it seeks to exploit. *See Purcell*, 549 U.S. at 4–5.

CONCLUSION

Plaintiffs request that the Court temporarily enjoin implementation of the 2026 Plan and order the use of the 2022 Plan while this case proceeds to a full trial on the merits.

¹³ See Adam Ellis, *Opinion: Florida Judge Recusal Raises “Bizarre” Questions of Bias*, Yahoo! News (May 9, 2026), <https://www.yahoo.com/news/articles/florida-judge-recusal-raises-bizarre-090547623.html>.

Dated: May 14, 2026

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2026 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to all counsel of record and counsel in the Service List below.

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